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2                   UNITED STATES BANKRUPTCY COURT  
3                   SOUTHERN DISTRICT OF NEW YORK

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5   In Re:

6                   Chapter 11  
7   LEHMAN BROTHERS                   Case No. 08-13555 (JMP)  
8   HOLDINGS, INC., et al,           (Jointly Administered)  
9                   Debtors.

10                  -----X

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12                  DEPOSITION OF JONATHAN HUGHES

13                  New York, New York  
14                  January 15, 2010

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16   Reported by:

17   MARY F. BOWMAN, RPR, CRR  
18   JOB NO. 27056

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January 15, 2010

10:15 a.m.

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2 A. I did, yes.

3 Q. What did you do?

4 A. I spoke to a number of people,  
5 including those that I have mentioned, including  
6 other employees of Barclays, to try to establish  
7 whether, in fact, they were there.

8 Q. And is there anyone else that you  
9 learned was present?

10 A. I can't now recall any additional  
11 names.

12 MR. STERN: Can we go off the record  
13 for just a second.

14 MR. MAGUIRE: Certainly.

15 (Discussion held off the record)

16 MR. MAGUIRE: So counsel is just going  
17 to give us a list.

18 MR. STERN: Yes. Mr. Hughes'  
19 recollection is correct, and in addition, in  
20 preparing for this deposition, we learned  
21 that for Barclays, Gerard LaRocca was  
22 present at the very beginning of the  
23 hearing, but he left early in anticipation  
24 of the possibility of needing to prepare for  
25 a closing.

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2 The individuals from Cleary were  
3 Victor Lewkow, Lindsee Granfield, Lisa  
4 Schweitzer, Joel Moss, Seth Kleinman.

5 In addition, there were attorneys from  
6 Sullivan & Cromwell present, Rob Lacy, Jay  
7 Clayton, Hydee Feldstein, Elizabeth Summers,  
8 Ken Myers.

9 And I believe that's the complete  
10 list.

11 Q. Sir, what was Mr. Klein's role in  
12 attending the sale hearing?

13 A. I'm not sure he had a specific role  
14 with respect to the hearing, but he had been,  
15 throughout the course of that week and in the  
16 period following the hearing, both an advisor to  
17 Barclays and also one of the principal  
18 negotiators of the transaction from the  
19 Barclays' perspective.

20 Q. And what about Mr. Cox's role?

21 A. Mr. Cox was also one of the principal  
22 negotiators of the transaction. So again, would  
23 have had an actual interest to be there.

24 Q. And what about Mr. White?

25 A. Mr. White was one of my colleagues in

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2 the legal function who was one of the legal  
3 advisors to Barclays on the transaction.

4 Q. And is the same true of Mr. Kaplan?

5 A. Correct.

6 Q. Can you tell me what you have learned  
7 in terms of what explanations were made at the  
8 sale hearing off the record about the  
9 transaction?

10 A. Are you asking me if I recall or if I  
11 have learned that there were some off-the-record  
12 descriptions of the transaction at the sale  
13 hearing?

14 Q. Yeah. If I understood your earlier  
15 answers correctly, you weren't personally  
16 present.

17 A. Correct.

18 Q. The question is, what information does  
19 Barclays have as to what was said off the record  
20 at the sale hearing?

21 A. Right. My understanding is that there  
22 was at one point in the proceedings an  
23 off-the-record description, as you say, provided  
24 to the assembled mass. Whether it was aimed at  
25 the entirety of the assembled mass of

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2 population, I don't know.

3 I believe it did include a  
4 presentation, so to speak, of Weil Gotshal's  
5 meaningful thoughts about certain aspects of the  
6 transaction, and that that presentation -- or  
7 the presentation included representatives of  
8 Lehman, Weil Gotshal, the creditors committee,  
9 the trustee, and possibly others who were also  
10 in attendance.

11 Q. And who gave that presentation?

12 A. I believe it was Lori Fife who was a  
13 partner or is a partner at Weil Gotshal, I  
14 believe.

15 Q. Anyone in addition to Ms. Fife?

16 A. I don't think that I have ascertained  
17 with any certainty that anybody else made any  
18 representations. It's possible that there were  
19 other partners of Weil Gotshal that also  
20 participated in it. But the recollections are  
21 not all abundantly clear.

22 Q. But the efforts that you have gone to  
23 as Barclays' designated 30(b)(6) representative  
24 are that Barclays is not aware of anyone else  
25 who spoke other than Ms. Fife in this

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2 off-the-record presentation?

3 A. There are some recollections that  
4 Michael Klein may have also discussed certain  
5 aspects of the transaction with similar  
6 groupings. Whether it was part of that same  
7 presentation or whether it was different, I  
8 haven't been able to establish.

9 Q. Anyone other than Ms. Fife and  
10 Mr. Klein?

11 A. Not that I'm aware of.

12 Q. Did you speak with Mr. Klein about any  
13 off-the-record discussion?

14 A. I have spoken to Mr. Klein about that,  
15 yes.

16 Q. And what did he tell you?

17 A. I think it's fair to say his  
18 recollection was not precise, which is why a  
19 moment ago I mentioned that not all  
20 recollections were clear.

21 Q. Can you tell me what is the best  
22 recollection that you were able to get as to  
23 what Mr. Klein had said?

24 A. It is hard, it is hard to be clear  
25 about it, because I would be repeating what were

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answers from Mr. Klein that weren't sufficiently certain for me to be able to represent exactly what it is that he had said.

Q. If you could tell me what you were told. I understand there may be some uncertainties, but just tell me what it is that you were told about what he said, whether he told you or anybody else remembers him saying it.

A. The best that I could say is that while Mr. Klein didn't have a strong recollection of the events, that the -- there was a recollection that he had referred to certain changes to some aspects of the negotiations that had happened earlier in the week, and that Mr. Klein had described some of those to people at court at that time, during that afternoon -- late afternoon, early evening.

Q. Who had that recollection?

MR. STERN: Hold on for a second.

I don't want you to intrude on the conversations that Mr. Hughes had in preparing for this deposition. You can ask him about the facts that he learned, but I

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don't think you're entitled to know who told him precisely what.

So I'll allow you to testify to facts that you learned, as best you can recall them, but not to the conversations that you had in preparation for the deposition.

MR. MAGUIRE: Well, I think it is a fact as to who has a recollection, so I think if the witness -- that's a factual thing. That's not a legal advice or opinion. So I think I am entitled to know who had the recollection.

MR. STERN: So what is the question?

Q. So the question is, when you testified about the recollection that somebody had, who was the person who had that recollection?

MR. STERN: I'll allow you to answer that, if you remember.

A. My best recollection is that Lindsee Granfield and Jason White recalled some form of discussion. That's about as much as I can remember from the various discussions that I have had on the topic.

And as I say, those recollections were

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uncertain, and as you can observe, my own recollections are uncertain.

Q. I just wanted to get the extent of what information you were able to get in that regard.

A. I understand.

Q. Did anyone recall what changes Mr. Klein referred to?

A. Again, with the same proviso as to certainty, there were references to, principally references to agreements made earlier that Friday between Lehman Brothers and Barclays with respect to what was subsequently termed clearance box assets, as a very convenient summary label, and another convenient summary label, some 15c3 assets, each of which had been the topic of discussions throughout the course of the day.

Q. And when you say with the same proviso as to certainty of recollection, what do you mean?

A. I mean that because they were -- each of those items were thought to be part of what Mr. Klein may have described to people at court.

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2 and that those -- that very description was not  
3 certainly recollected that they are -- by  
4 definition, the content of the description was  
5 not certainly recollected.

6 Q. Is what you gathered that certain  
7 people thought those two subjects are what  
8 Mr. Klein may have spoken about, or do they  
9 actually recall that he had spoken about each of  
10 those subjects?

11 A. The latter.

12 Q. And what did people recall him saying  
13 about clearance boxes?

14 A. That there had been a discussion and  
15 an agreement about the clearance box assets, and  
16 most importantly, I think, that Lehman Brothers  
17 had represented to Barclays that there were  
18 assets in what were termed the clearance boxes,  
19 which assets were unencumbered assets of Lehman  
20 Brothers, which were earlier in the day  
21 identified as being capable of being delivered  
22 in the transaction to Barclays.

23 Q. And who recalled Mr. Klein saying all  
24 that?

25 A. The people that I have mentioned, so I

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2 think Lindsee Granfield and Jason White.

3 Q. And did Lindsee Granfield and Jason  
4 White make clear to you that was a recollection,  
5 a clear recollection that they had?

6 A. Again, as I said earlier, I wouldn't  
7 describe their recollections as certain  
8 recollections, but that was my impression.

9 Q. I'm sorry. Your impression was --

10 A. That they recalled, first of all, a  
11 description of some facets of the transaction by  
12 Mr. Klein, but -- and that that included  
13 reference to the clearance box assets.

14 Q. Did they tell you who was present when  
15 Mr. Klein made his, I'll call it presentation?

16 A. No. Save that they thought it took  
17 place at court.

18 Q. Did anyone tell you that Mr. Klein  
19 referred to any other changes in the  
20 transaction?

21 A. As I mentioned a moment ago, I think  
22 it included the 15c3 assets. I don't recall  
23 that it included anything else. So that's  
24 possible that it did, but I don't recall  
25 anything else.

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2 Q. Did anyone tell you that they recalled  
3 Mr. Klein saying anything about margin?

4 A. No.

5 Q. Did anyone tell you that they recalled  
6 Mr. Klein saying anything about clearing fund?

7 A. No.

8 Q. Is there anything else that anyone  
9 told you they recalled Mr. Klein saying at the  
10 sale hearing?

11 A. Not that I recall.

12 Q. Is there anything else that was --  
13 leaving aside Lori Fife's presentation for right  
14 now, is there anything else that you understand  
15 was said off the record in court other than what  
16 you have told us about Mr. Klein?

17 A. No.

18 Q. Can you tell us, please, what you  
19 understand Lori Fife said off the record?

20           A.       The best I've been able to establish  
21        is that Ms. Fife referred to some of her earlier  
22        descriptions with respect to the transaction, by  
23        which I mean descriptions made at the hearing  
24        which preceded the sale hearing, namely on the  
25        17th of September, and that she, both off the

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number comprised.

Q. And is Barclays in a position to provide any understanding as to what it believed comprised the 47.4 billion dollars that was represented to the court at the sale hearing?

MR. STERN: Objection to the form.

Are you talking about speculation or --

MR. MAGUIRE: No. I'm asking him did  
Barclays have an understanding at the sale  
hearing.

MR. STERN: I thought he has already answered that, but go ahead.

A. My understanding was that Ms. Fife was describing or explaining to the court changes in the valuations of long positions which she previously described. Whether that was a description by Ms. Fife that was limited to that, I don't know.

Q. And your preparation for this deposition has not shed any additional light on that from the people you have spoken to at Barclays?

A. From the people I have spoken to at Barclays, their recollections are consistent

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2 with what I have just said. I have not had the  
3 opportunity to speak to Ms. Fife or Mr. Miller,  
4 so I can't say with certainty what was in her  
5 mind when she presented the number.

6 Q. I'm only asking for Barclays'  
7 understanding.

13 (Recess)

14 BY MR. MAGUIRE:

15 Q. Sir, is Barclays aware of any  
16 disclosure to the court of any profit or gain  
17 that Barclays anticipated it would make from the  
18 sale transaction?

19 MR. STERN: Are you talking about  
20 September 19?

21 MR. MAGUIRE: Yes.

22 A. On September the 19th, I'm not aware  
23 of anybody identifying to the court a gain, nor  
24 am I aware that anybody who made any  
25 representations to the court was in a position

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2 to know one way or another whether Barclays  
3 would have had a gain.

4 I do think there were objections at  
5 that hearing based on the notion that Barclays  
6 would make a windfall profit from the  
7 transaction. There were some meaningful  
8 complaints, for want of a better word, made on  
9 behalf of creditors, I believe, that identified  
10 to the court a strong likelihood that Barclays  
11 would make what in their description was a  
12 windfall profit, and I believe that the judge  
13 heard those complaints and dismissed them as  
14 being insignificant in light of the importance  
15 of the transaction and the importance of  
16 approving the transaction, among other things,  
17 for the benefit of the estate, creditors,  
18 customers.

19 And I believe also that the court felt  
20 that it was not relevant whether or not that  
21 windfall profit did or did not exist. Even if  
22 it did, I think that the judge explained that  
23 there was a greater need in light of the turmoil  
24 in the markets at that point in time. But as I  
25 mentioned, in particular for the benefit of the

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2 estate and the creditors.

3 Q. At the time of the sale hearing, did  
4 Barclays expect to make a gain on the closing of  
5 the transaction?

6 A. Sorry, could you just repeat, at which  
7 point in time?

8 Q. At the sale hearing.

9 A. At the sale hearing, yes, I believe  
10 so. I believe in fact we had even made the  
11 public announcement that we would make a -- that  
12 we expected to make a meaningful accounting gain  
13 on the transaction.

14 Q. And when you say the public  
15 announcement, you are referring to the  
16 announcement and analyst call on the 17th?

17 A. Yes.

18 Q. In the course of that analyst call,  
19 Mr. Varley described the deal as having been  
20 derisked. Do you recall that?

21 A. I don't recall that specific term, no.

22 Q. Did Barclays understand the sale to  
23 have been derisked?

24 A. I'm not sure I understand what you  
25 mean by derisked.

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2 Q. Did you participate in the analyst  
3 call?

4 A. No, no, I did not.

5 Q. I'll represent to you that on the  
6 call, Mr. Varley said, and I quote, "What we  
7 have taken is a portfolio of trading assets and  
8 liabilities that are first of all derisked, and  
9 secondly, those that need to support the ongoing  
10 parts of the business that we have acquired."

11 Is it Barclays' understanding that  
12 that was a true and correct statement?

19                   But subject to that, if you can  
20                   answer.

21           A.       I've no reason to believe that what  
22        Mr. Varley may have said was inaccurate. I  
23        haven't spoken to Mr. Varley about that or  
24        indeed any portion of his involvement in order  
25        to prepare for this deposition.

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that collateral.

I believe there were many, many communications from the OCC and indeed back from the trustee that record that understanding among those parties, that all of that collateral, in whatever form, was to go to Barclays. I believe that what was ultimately signed -- sorry, the terms ultimately signed and encapsulated in the transfer and assumption agreement not only did establish the agreement for the transfer of all of that margin, but was consistent with the broader agreement that had already been reached among the parties and which everybody at that point plainly was aware of.

So the TAA, as you described it, was at a slightly greater level of detail than had been mentioned in the APA, but was entirely consistent with it, and I think was, as it related to the OCC, the effective document that it needed to properly transfer collateral that was previously with LBI in connection with its -- held by LBI in connection with its business as an FCM to Barclays.

Q. Did the TAA add any assets that

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2 were -- to the sale that Barclays was taking?

3 MR. STERN: I am going to instruct the  
4 witness not to answer this, because again,  
5 you're calling for an interpretation of the  
6 TAA. Your 30(b) (6) topic calls for  
7 information concerning the negotiation and  
8 drafting of the TAA. I don't believe it  
9 calls for interpretation of the TAA.

10 So I'll instruct you not to answer.

11 If you want to ask him questions about  
12 the course of the negotiation and drafting  
13 of that document, that's fine.

14 Q. In entering into the TAA, did Barclays  
15 intend to obtain any assets that it was not  
16 already obtaining under the APA?

17 A. I think in discussing through its  
18 representatives the terms of the APA, Barclays'  
19 intention was to insure that there was nothing  
20 in that agreement inconsistent with the  
21 acquisition of the business that it had already  
22 agreed to acquire. And I think that best  
23 describes Barclays' intention at the time.

24 Q. So I guess I'm still trying to  
25 understand, when entering into it, did Barclays

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intend that there were any assets that it would get at the OCC that Lehman had at the OCC that Barclays was not already acquiring under the APA?

MR. STERN: I think again this calls for an interpretation of both the APA and the TAA. So I am going instruct the witness not to answer.

If you ask him questions about communications and negotiations concerning the TAA, that I think is consistent with your 30(b)(6) topic number 20.

Q. And I take it you're following your  
counsel's advice?

A. Yes.

Q. Is Barclays aware of any disclosure that Barclays made to the creditors committee concerning the amount of margin that was being transferred to Barclays as a result of the sale?

A. I'm not aware of actual disclosures by Barclays to the creditors committee to that effect. It is possible, though I don't know with any certainty, that representatives of the creditors committee were involved in or part of,

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2 participated in or were present at discussions  
3 during the closing weekend relating to margin or  
4 collateral held in connection with the  
5 derivatives business.

6 But I am not aware of any specific  
7 communication, as I said, of the type you  
8 described. Nor indeed have I asked that  
9 question in preparing for today.

10 Q. Are you aware of any such disclosure  
11 to the trustee?

12 A. When you say such disclosure, will you  
13 do me the favor of repeating how you define  
14 disclosure?

15 Q. Any disclosure by Barclays of the  
16 amount of margin that was being conveyed to  
17 Barclays under the sale?

18 A. And to what time period are you  
19 referring?

20 Q. This is anytime prior to the closing.

21 A. It's possible that there were  
22 communications referring to valuations, but I'm  
23 not aware that Barclays made any representation  
24 to anybody about how much margin there may have  
25 been or in what form it may have -- or what form

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it may have taken, because I don't think at that point Barclays was able to establish precisely either the total or the form.

I should also say, that given what I have already said about what would be surprising, indeed shocking, about the transfer of the business that did not include all of the margin in whatever form, that it wouldn't then I think have appeared as a likely important part of the discussion.

But it is possible that there were estimations of related values that had been provided by Lehman during the course of the week. It's possible that there had been, you know, discussion with respect to those values, possible that the trustee was involved in or had -- had sight of some of those estimations of value.

But again, I think in common with all other valuations, not only were they, as I have said I think a number of times, extremely uncertain, they were also, again as I have said many times, provided by Lehman, and they weren't Barclays' numbers and Barclays' estimations.

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Q. I'll show you a document previously marked as Exhibit 19. So you will see on both the assets and the liability side the term "derivatives" appears.

A. Yes.

Q. In each case, the same number applies, which is 4 and a half billion dollars.

A. Yes.

Q. Did that number include, either column, any margin?

A. I don't know.

Q. Have you done anything to check whether that was the case?

A. No.

Q. If you wanted to determine whether this 4 and a half billion dollar number includes margin, who would you turn to?

A. I'm tempted to make a joke, but I  
won't.

I really don't know, because I don't know who -- I don't know who composed this document. I believe it is a document that was produced, put together and produced at some point by somebody at Lehman Brothers, but I